

Ricky Bingham appeals his convictions for voluntary manslaughter as a class A felony¹ and attempted murder as a class A felony.² Bingham raises two issues, which we revise and restate as:

- I. Whether the evidence is sufficient to sustain his convictions; and
- II. Whether his convictions are inconsistent and irreconcilable.

We affirm.

The relevant facts follow. In November 2006, Benjamin Levi Winchester moved back in with his mother, Kaye Bingham, and Bingham, her husband and Winchester's stepfather. On December 2, 2006, Winchester spent the night at his brother's house. When he returned to Bingham's house the next day, Bingham was upset and mentioned that Winchester was "always gone from the house" and "needed to be at the house more to help out." Transcript at 109. Kaye told Bingham to calm down because Winchester had only been gone two nights since he had moved in with them, but Bingham called Kaye a "fucking bitch" because she "was supposed to be [his] wife and . . . be in [his] corner." *Id.* at 110. They argued for a few minutes, and then Winchester went to his room and called his father. He heard Bingham yelling at Kaye that Kaye and Winchester were driving him "fucking nuts." *Id.* at 111. Winchester's father told him to get his clothes and go back to his brother's house.

¹ Ind. Code § 35-42-1-3 (2004).

² Ind. Code § 35-42-1-1 (Supp. 2006) (subsequently amended by Pub. L. No. 1-2007, § 230 (eff. March 30, 2007)); Ind. Code § 35-41-5-1 (2004).

When Winchester walked into the hallway, Bingham was standing in the hall pointing a laser-sighted revolver at Winchester. Blinded by the laser, Winchester asked, “[W]hat are you going to do, shoot me?” Id. at 113. Bingham then shot Winchester in the chest. Kaye jumped up from the couch in the living room and screamed, “No,” and Bingham “spun around and shot her.” Id. at 114. Winchester, who had fallen on the floor with his back against the closet door in the hallway, crawled into his room and shut the door. He “felt pressure coming on the door” and saw Bingham’s face as Bingham “stuck the gun in” and shot Winchester three more times, hitting him in the head, neck, and wrist. Id. at 115. Despite his wounds, Winchester was able to pick up a telephone and call the police.

Returning to the hallway, Winchester watched as Bingham shot Kaye again in the neck. Winchester yelled, and Bingham grabbed the telephone from Winchester’s hand and threw him to the ground. Winchester escaped through the front door and ran to a neighbor’s house to get help. Kaye later died from her wounds.

The State charged Bingham with murder and attempted murder. At trial, Bingham presented evidence that he had hurt his back earlier in 2006 and had, at various times, been prescribed numerous drugs, including Percocet, Norco, Xanax, Lexapro, Ambien, and Zanaflex, for the pain and resulting depression. Based on this evidence, Bingham raised the defense of involuntary intoxication and argued that, because of the prescription drugs, he was unable to appreciate the wrongfulness of his actions when he shot Kaye and Winchester. The jury found Bingham guilty of voluntary manslaughter as a class A

felony, a lesser included offense of murder, and guilty of attempted murder. The trial court sentenced Bingham to twenty-five years for each conviction and ordered that the sentences be served consecutively, for a total sentence of fifty years in the Indiana Department of Correction.

I.

The first issue is whether the evidence is sufficient to sustain Bingham's convictions. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

Bingham raises the defense of involuntary intoxication. Specifically, Bingham argues that, because of the prescription drugs he was taking for pain and depression, he "had a distorted thought process" and was unable to appreciate the wrongfulness of his conduct when he shot Kaye and Winchester. Appellant's Brief at 8.

Involuntary intoxication is a defense to the crime charged if, as a result of the intoxication, the defendant was unable to appreciate the wrongfulness of the conduct at

the time of the offense. Ellis v. State, 736 N.E.2d 731, 734 (Ind. 2000). An involuntary intoxication defense disputes the existence of intent. Id. If successful, this defense would negate culpability for the offenses Bingham committed. See id.

Ind. Code § 35-41-3-5, which governs the defense, provides:

It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:

- (1) without his consent; or
- (2) when he did not know that the substance might cause intoxication.

The defendant has the burden of proving the defense. Davidson v. State, 849 N.E.2d 591, 594 n.1 (Ind. 2006); Jackson v. State, 426 N.E.2d 685, 689 (Ind. 1981) (“Whether or not an appellant’s involuntary intoxication prevented him from forming the requisite intent for attempted murder was a question of fact for the jury and one upon which the appellant bore the burden of proof.”), cert. denied, 535 U.S. 1038, 122 S. Ct. 1799 (2002).

Bingham does not argue that he took prescription drugs without his consent. Rather, Bingham argues that his alleged state of intoxication was “clearly involuntary” because “[i]t is only logical for any patient to assume that medicine prescribed by a doctor would not cause intoxication.” Appellant’s Brief at 9. However, Bingham does not cite any evidence in support of the proposition that he did not know that the prescription drugs in question “might cause intoxication.” Ind. Code § 35-41-3-5. The record reveals only that some of Bingham’s prescription drugs were narcotics, that

Bingham signed an agreement with his physician that he would receive those narcotics only from him, and that his physician counseled Bingham concerning all known effects of his medication. Based on the evidence presented at trial, we cannot say that Bingham fulfilled his burden of proving that intoxicating substances were introduced into his body and that he did not know that the substances might cause intoxication. Accordingly, we conclude that the State presented evidence of a probative value from which a reasonable trier of fact could have found Bingham guilty beyond a reasonable doubt of voluntary manslaughter as a class A felony and attempted murder.³

II.

The next issue is whether Bingham's convictions are inconsistent and irreconcilable. Bingham argues that convictions for voluntary manslaughter and attempted murder are inconsistent because he "could not have formulated the specific intent to kill [Winchester] during the exact time he was found to be acting in 'sudden heat'" when he killed Kaye. Appellant's Brief at 14. He also argues that the convictions are "factually inconsistent." *Id.* at 15.

We review verdicts for consistency and will take corrective action if necessary. May v. State, 810 N.E.2d 741, 743 (Ind. Ct. App. 2004). Although perfectly logical

³ Bingham appears at times to conflate the defenses of insanity and intoxication. The insanity defense is governed by Ind. Code § 35-41-3-6, which provides that "[a] person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense." Ind. Code § 35-41-3-6(a). However, Bingham's argument is that his "degeneration was characterized by the ingestion of more and more drugs to treat his pain and depression." Appellant's Brief at 8. Thus, the thrust of his defense is that he was intoxicated, and he was therefore required to show that his intoxication was involuntary. Ind. Code § 35-41-3-5.

verdicts are not required, action by this Court is warranted when confronted with extremely contradictory and irreconcilable verdicts. Id. Verdicts that may seem inconsistent on some level are not legally inconsistent if they can be explained by the fact-finder's exercise of its power to assign the proper weight to and either accept or reject certain pieces of evidence. Id. Additionally, verdicts are inconsistent

only where they cannot be explained by weight and credibility assigned to the evidence. Thus, an acquittal on one count will not result in reversal of a conviction on a similar or related count, because the former will generally have at least one element (legal or factual) not required for the latter. In such an instance, the finder of fact will be presumed to have doubted the weight or credibility of the evidence presented in support of this distinguishing element.

Id. at 744.

A person commits murder when the person “knowingly or intentionally kills another human being.” Ind. Code § 35-42-1-1. On the other hand, a person commits voluntary manslaughter when the person knowingly or intentionally kills another human being “while acting under sudden heat.” Ind. Code § 35-42-1-3(a) (2004). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. I.C. § 35-42-1-3(b). Thus, “[t]he element distinguishing murder from voluntary manslaughter is ‘sudden heat,’ which is an evidentiary predicate that allows mitigation of a murder charge to voluntary manslaughter.” Dearman v. State, 743 N.E.2d 757, 760 (Ind. 2001). The Indiana Supreme Court has defined “sudden heat” as “anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person,

preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection.” Id.

Here, when Winchester left his room, he found Bingham standing in the hallway pointing a laser-sighted revolver at him. Bingham then shot Winchester in the chest. Kaye screamed, “No,” and Bingham “spun around and shot her.” Transcript at 114. Bingham fired on Winchester three more times, hitting him in the head, neck, and wrist. From these facts, the jury could have concluded that Bingham knowingly and intentionally attempted to kill Winchester but shot Kaye in anger, rage, or resentment because of her reaction to his attack on Winchester. We conclude that the verdicts are not fatally inconsistent. See May, 810 N.E.2d at 744 (holding that the jury’s verdicts were not fatally inconsistent).

For the foregoing reasons, we affirm Bingham’s convictions for voluntary manslaughter as a class A felony and attempted murder as a class A felony.

Affirmed.

ROBB, J. and CRONE, J. concur